

EXHIBIT Z

EXHIBIT 2
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

CISCO SYSTEMS, INC.,)
)
Plaintiff,)
) Case No.
vs.) 5:14-cv-05344-BLF (PSG)
)
ARISTA NETWORKS, INC.,)
)
Defendant.)
)
_____)

VIDEOTAPED DEPOSITION OF KEVIN C. ALMEROTH
San Francisco, California
Tuesday, June 28, 2016
Volume I

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Reported by:
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1 other times I've testified under deposition. I 08:36:01
2 don't know that there's a distinction in what
3 Mr. Holmes said.

4 Q Okay. Are you asking the court to
5 recognize you as an expert in this matter? 08:36:14

6 A I don't know that I'd be asking the court
7 to do that, but certainly, I think my qualifications
8 justify that the court see me as an expert.

9 Q On what subjects relevant to the opinions
10 expressed in your reports do you claim to be an 08:36:37
11 expert?

12 A I'm not sure I understand the question. I
13 don't know that I can sit here and come up with the
14 definitive list of subjects.

15 I think on any of the subjects that I 08:36:58
16 testify about and offer opinions about, I believe
17 I'm qualified as an expert.

18 Q Are you an expert in computer science?

19 A I believe I am.

20 Q Are you an expert in networking 08:37:09
21 technology?

22 A I believe I am.

23 Q Are you an expert in network device
24 operating systems?

25 A I believe I am. 08:37:19

1 Q From -- for how many different network 08:37:24
2 device vendors have you reviewed any source code for
3 their network device operating systems?

4 MR. HOLMES: Objection. Vague.

5 THE WITNESS: Generally speaking, or just 08:37:39
6 in the conjunction -- just in conjunction with this
7 case?

8 BY MR. SILBERT:

9 Q Well, why don't we take them one by one.
10 First, in conjunction with this case, for 08:37:47
11 how many network device vendors have you reviewed
12 any source code for their network device operating
13 systems?

14 A Sitting here right now, I specifically
15 recall two: Cisco and Arista. There might have 08:38:04
16 been others. I just don't remember them.

17 Q And generally speaking, for how many
18 different network device vendors have you reviewed
19 any source code for their network device operating
20 systems? 08:38:22

21 A Maybe ten.

22 Q Can you name them?

23 A In addition to Cisco and Arista, I believe
24 I've reviewed source code for A10, maybe F5, 3Com.
25 Quagga is an open source so I've looked at source 08:38:49

1 code. We've worked on Quagga. 08:38:59

2 There's a couple of other cases that I
3 worked on that I looked at source code. I think
4 they're listed in my case history. So I've looked
5 at source code for at least some of those. 08:39:18

6 Q Are those companies that you just
7 identified all the ones that you can remember by
8 name, as you sit here today?

9 A By name, as I sit here right now, that's
10 correct. Like I said, I would look at the case 08:39:33
11 history I have. There's at least a couple more that
12 I know of for companies that are listed there.

13 Q Did you perform the source code review
14 that you're referring to in connection with
15 litigation matters, other litigation matters? 08:39:48

16 A In some instances, yes, but not
17 exclusively.

18 Q In what other situations did you review
19 source code for network device vendors' operating
20 systems? 08:40:07

21 MR. HOLMES: Objection. Vague.

22 THE WITNESS: The one that I had mentioned
23 was Quagga.

24 You said "network device vendors." I
25 mean, Quagga is an open source product. It may or 08:40:19

1 may not qualify as a network device vendor. 08:40:23

2 I've also looked at lots of routing code
3 in general, maybe not associated with a particular
4 vendor. Most code tends to be proprietary.

5 But either, as I mentioned, through 08:40:43
6 litigation earlier, or in other instances when some
7 of the source code has been made available, I've
8 looked at it.

9 I've been pretty intimately involved with
10 router functionality for a good portion of my 08:40:56
11 career.

12 BY MR. SILBERT:

13 Q For what other network device vendors have
14 you reviewed source code specifically relating to
15 their parsers? 08:41:08

16 A I don't know that I could say, sitting
17 here now. I mean, given the fairly significant
18 experience I've had with network device vendors and
19 their source code, both in litigation and beyond,
20 I'd have to go back and review some of the subject 08:41:39
21 matter of those cases.

22 I think I've -- there's been at least some
23 instances where I've looked at parsing code. I just
24 don't remember them specifically.

25 Q Would you be able to tell by looking at 08:41:53

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1 your experience and resume that's attached to your 08:41:56
2 expert report?

3 A It might help. I don't know that that
4 would allow me to give you a complete answer.

5 As I said, I have a fairly varied and 08:42:11
6 lengthy experience in dealing with routers and
7 routing code, both in the context of network device
8 vendors and routing generally.

9 Q For what network device vendors have you
10 spent more than three hours interacting with their 08:42:27
11 operating systems?

12 A I'll do my best. I suspect the list is
13 really quite lengthy.

14 HP, 3Com, Bay before they were bought by
15 Nortel, Nortel, 3Com, IBM, Cisco, Arista, Juniper, 08:42:58
16 Wellfleet, Netgear, D-Link.

17 There's at least a couple other that are
18 on the tip of my tongue. I just can't think of them
19 right now.

20 Q Have you spent more than three hours 08:43:39
21 interacting with Dell's network operating system?

22 A It's very likely that I have. I don't
23 know that I could point out a specific instance. It
24 would be in line with saying, identify the first
25 time you used an Apple operating system or, you 08:44:03

1 know, count the number of instances you've used 08:44:08
2 Windows 95 or NT or any particular operating system.

3 Over the course of my career, I've used
4 dozens of different routers, switches, gateways,
5 hubs, both as an operator, as a researcher, in a lot 08:44:25
6 of different contexts.

7 Q Have you spent more than three hours
8 interacting with Brocade's network operating system?

9 A That's another one I likely should have
10 mentioned. And I forget who they just merged with. 08:44:50
11 And I think I've had experience with them as well.
12 So yes, I would think so.

13 Q Have you spent more than three hours
14 interacting with IBM or Lenovo's network operating
15 system? 08:45:15

16 A Yes. I think I mentioned IBM on that
17 list.

18 Q I believe you did. My apologies.
19 And to be clear, do you understand that
20 IBM, at some point, sold its networking operations 08:45:25
21 to Lenovo?

22 A Yes.

23 Q Okay. Do you consider yourself -- please.

24 A Another one, Foundry. I think that's one
25 of the cases, and that's Foundry both in using the 08:45:45

1 device and then looking at source code and 08:45:50
2 potentially even parsing-related source code.

3 Q In what context did you review
4 parsing-related source code for Foundry's network
5 operating system? 08:46:07

6 A It would have been in the context of
7 litigation. I think there's a case in my CV. I'm
8 not sure how significant any of the parsing
9 functionality was to that case. It might have been
10 fairly cursory. 08:46:21

11 I would need a few minutes to try and dig
12 into the recesses of long-term memory and see if I
13 could even remember what that case was about.

14 Q Do you consider yourself an expert in
15 reading emails and knowing what the authors of those 08:46:40
16 emails intended?

17 MR. HOLMES: Objection. Vague and
18 compound.

19 THE WITNESS: I don't know by what
20 criteria you would use to determine whether somebody 08:47:01
21 was an expert. I'm not sure that some particular
22 expertise is required to look at an email, so I'm
23 not sure I can really answer that question.

24 But I certainly can say that, especially
25 in technical disciplines, looking at emails, I can 08:47:22

1 certainly see what they say and understand the 08:47:26
2 context in which they offer what they've said.

3 BY MR. SILBERT:

4 Q You can explain the technical issues
5 related to an email that discusses technical issues 08:47:39
6 in your field; is that right?

7 A That's part of what my answer was. And
8 for at least that part of it, I think that's
9 correct.

10 Q Do you claim to have some special 08:47:55
11 knowledge of the state of mind of Arista employees
12 at any particular point of time?

13 MR. HOLMES: Objection. Vague, calls for
14 a legal conclusion.

15 THE WITNESS: I'm not sure what you mean 08:48:11
16 by "special knowledge."

17 I certainly can look at an email in the
18 context of a collection of emails and see the words
19 that were written in that email, and consider that
20 email in the context of other evidence, and use it 08:48:24
21 to support a conclusion that I've reached. I think
22 I have that ability.

23 BY MR. SILBERT:

24 Q But do you consider yourself to be an
25 expert with particular training and qualifications 08:48:35

1 to do that? Or is that simply something you can do 08:48:38
2 in the same way a layperson can do?

3 MR. HOLMES: Same objections, and it's
4 also compound.

5 THE WITNESS: Again, I'm not sure what 08:48:50
6 threshold you're using for expertise, what skill set
7 you would particularly identify as qualifying
8 somebody as an expert beyond that of a layperson.

9 And as I've said in previous answers, I
10 certainly think I have the capability to look at 08:49:06
11 emails. And specifically the emails that I did look
12 at in this case, I don't think I'm, in this case,
13 attempting to intuit any special knowledge of that
14 person beyond simply what the emails state in the
15 context of all of the other evidence. 08:49:29

16 BY MR. SILBERT:

17 Q So you're not expressing an opinion on
18 what the state of mind of any Arista employee was at
19 any time beyond what, in your view, the emails
20 state? 08:49:41

21 MR. HOLMES: Objection. Calls for a legal
22 conclusion, vague.

23 THE WITNESS: Well, I think the report
24 speaks for itself. I don't think I can sit here and
25 offer a qualification of my opinions in the way that 08:49:51

1 you've expressed it. I don't know that that's 08:49:56
2 necessarily accurate.

3 I think that the opinions in the report
4 are what they are, and I think the report speaks for
5 itself. 08:50:04

6 BY MR. SILBERT:

7 Q Do you claim to be an expert at comparing
8 works to determine if one was plagiarized from
9 another?

10 MR. HOLMES: Objection. Vague as to 08:50:21
11 "works."

12 THE WITNESS: Again, I'm not sure what
13 threshold you're using for expertise there.

14 Certainly, I have spent a lot of time in
15 the last 20 years looking at student assignments and 08:50:34
16 source code and attempted to determine instances of
17 plagiarism.

18 I've also done a fair amount of research
19 in developing tools that can assist in plagiarism
20 detection and using those tools. And that involves 08:50:54
21 a multistep process that I think I have a lot of
22 experience in.

23 So I think, generally speaking, certainly
24 based on both the experiences I've had as an
25 instructor, the research that I've done, and all of 08:51:12

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1 the other expertise, that by most instances, that 08:51:15
2 would qualify me as an expert on plagiarism.

3 BY MR. SILBERT:

4 Q You mentioned software tools, and you
5 discuss this in your report. 08:51:29

6 You've developed one or more software
7 tools whose purpose is to detect plagiarism; is that
8 right?

9 A No, that's not quite right. And we were
10 very careful in all of our publications, that what 08:51:45
11 we were looking for was evidence of similarity
12 between documents. And that evidence of similarity
13 is often a starting place for determining whether or
14 not there was copying. But it really is a multistep
15 process. 08:52:06

16 I can give you probably about six hours
17 and 45 minutes of anecdotes on plagiarism and how it
18 happens and why it happens and how to detect it and
19 how to use existing tools, both for text like
20 reports, and then also software. 08:52:22

21 Q And what's the name of the tool that you
22 developed to detect evidence of similarity?

23 A The one that I did was PAIRwise, and then
24 there was a second version, PAIRwise version 2, or
25 2.0. 08:52:43

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1 Q And is that tool commercially available? 08:52:45

2 A It is commercially available through the
3 university. You can purchase it.

4 Q And you also said in your report that
5 you've developed systems to detect plagiarism; is 08:53:03
6 that correct?

7 A I think it would be referring to things
8 like PAIRwise and its use in the greater
9 determination of whether or not there's plagiarism.

10 Q When you say "it," you mean your statement 08:53:30
11 in your report that you developed systems to detect
12 plagiarism?

13 A I haven't seen that statement. You
14 haven't given me the report so I don't know the
15 context that it's talking about. 08:53:40

16 But to the extent that it's talking about
17 plagiarism detection as a system, it includes, for
18 example, tools for software comparison as one of the
19 techniques that can be used as part of a system.

20 Q Why don't you take a look at your report, 08:53:56
21 which is sitting on the table in front of you.

22 And Drew, would you like a copy? I have
23 another copy.

24 MR. HOLMES: Sure.

25 /// 08:54:05

1 A I'm not sure that it was any single 09:49:05
2 person. Certainly there were materials that were
3 offered to me as part of discovery. Certainly there
4 were materials that I asked for and was provided.

5 So I don't know that I can attribute a 09:49:20
6 single person to the materials that I ultimately
7 considered in reaching my opinions.

8 Q Were the majority of them selected by
9 Cisco's counsel?

10	MR. HOLMES: Objection. Vague.	09:49:44
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11 THE WITNESS: It would be hard for me to
12 say.

13 Generally, when I work on a case, I will
14 ask for, you know, things like evidence from the
15 interrogatories, I'll ask for interrogatories. 09:50:06
16 Whether you can attribute that to something that
17 Cisco selected or that I asked for, I suppose it
18 depends on how you want to frame the question.

19	I think, ultimately, I have the materials	
20	that I considered in forming those opinions. I	09:50:25
21	don't think that there was anything I asked for that	
22	was not provided, or that there was any additional	
23	analysis I felt like I could have or should have	
24	done that would have affected my opinions one way or	
25	the other.	09:50:41

1 I think the opinions that are in the 09:50:42
2 report are based on the materials that I considered,
3 and those materials were sufficient to reach those
4 opinions.

5 BY MR. SILBERT: 09:50:51

6 Q How much time did you spend reviewing
7 discovery materials in this case? And by "discovery
8 materials," I'm including documents, written
9 discovery responses like interrogatories, and
10 deposition testimony. 09:51:06

11 A I don't even think I could give you a
12 ballpark number. The best I could say is, it's
13 probably at least a couple hundred, if not several
14 hundred hours. But that probably includes also
15 writing the report. 09:51:23

16 Q Did you review all the discovery materials
17 that you relied on yourself, or did, in some cases,
18 other people review them and provide summaries of
19 their contents to you?

20 A I -- as I sit here today, I'm not aware of 09:51:49
21 any materials that I considered that I didn't review
22 myself.

23 Q Did anyone review materials and provide
24 summaries of their contents to you that you relied
25 on? 09:52:02

1 MR. HOLMES: Objection. Asked and 09:52:03
2 answered.

3 THE WITNESS: I think that to the extent
4 there were materials or, as you stated, summaries
5 that I relied on, they're included in my materials 09:52:21
6 considered. So for example, interrogatories. And
7 in at least several instances, the way I've used the
8 interrogatories are described in the report.

9 I don't really consider receiving the
10 interrogatories as receiving a summary of -- a 09:52:44
11 summary of the evidence that I then relied on the
12 summary of.

13 BY MR. SILBERT:

14 Q Other than interrogatories, did you rely
15 on any summaries of discovery materials that were 09:53:00
16 provided to you by anyone?

17 MR. HOLMES: Objection. Asked and
18 answered.

19 THE WITNESS: I don't believe so. I think
20 to the extent I relied on any materials, they're 09:53:15
21 listed in the "Materials Considered" section.

22 BY MR. SILBERT:

23 Q Did you read all of the depositions that
24 you quote from in your report?

25 A Yes. 09:53:23